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No. 111 Original

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

STATE OF DELAWARE,
Plaintiff,

STATE OF TEXAS,
Plaintiff-Intervenor,
v.

STATE OF NEW YORK,
Defendant.

MOTION OF THE STATES OF ARKANSAS, FLORIDA, IOWA, MISSISSIPPI, MISSOURI, NEW HAMPSHIRE AND WEST VIRGINIA FOR LEAVE TO FILE COMPLAINT IN INTERVENTION; COMPLAINT IN INTERVENTION; AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

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November 17, 1989

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MOTION OF THE STATES OF ARKANSAS, FLORIDA, IOWA, MISSISSIPPI, MISSOURI, NEW HAMPSHIRE AND WEST VIRGINIA FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

Pursuant to Rule 9 of the Rules of the Supreme Court, the States of Arkansas, Florida, Iowa, Mississippi, Missouri, New Hampshire and West Virginia (hereinafter the "States"), sovereign states of the United States of America, by and through their Attorneys General and Special Counsel, move this Court for an order permitting them to intervene as Plaintiffs in the above-entitled case and permitting their proposed Complaint in Intervention, attached hereto, to be filed. In support of this motion, and as more fully set forth in the States' Brief in Support of Motion for Leave to File Complaint in Intervention, the States allege as follows:

I.

1. On May 31, 1988, this Court granted Plaintiff State of Delaware's ("Delaware") Motion for Leave to File Complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property held by securities brokerage firms incorporated in Delaware, referred to by Delaware as "Escheatable Property of Unknowns."

2. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master.

3. On February 21, 1989, the Court granted the State of Texas' ("Texas") Motion for Leave to File Complaint in Intervention. Texas, like Delaware, raised the issue as to which state is entitled to claim and take possession of "Escheatable Property of Unknowns," which it referred to as "Excess Receipts." The Texas Complaint also made subject to this suit certain additional unclaimed intangible personal property held by clearinghouses for the settlement of trades in securities, and unclaimed principal and interest payments on state and municipal obligations.

4. On various dates, the States of Arizona, Connecticut, Idaho, New Mexico, Tennessee, Virginia and Wisconsin, and the District of Columbia each filed a motion for leave to file a complaint in intervention and a proposed complaint substantively identical to that of Texas.

5. On April 21, 1989, the States of Alabama, Hawaii, Illinois, Indiana, Kansas, Louisiana, Montana, Nevada, Oklahoma, South Dakota, Utah and Washington, and the Commonwealths of Kentucky and Pennsylvania (hereinafter "Alabama, *et al.*") filed a Motion for Leave to File Complaint in Intervention, a Complaint in Intervention, and a Brief in Support of Complaint in Intervention.

6. On September 13, 1989, the Special Master filed a report with the Court in which he recommended that the

Court grant each of the motions for leave to file a complaint in intervention referenced in paragraphs 4 and 5, *supra*.

7. On October 16, 1989, the Court accepted the Special Master's Report for filing.

8. On October 12, 1989, Texas filed a Motion for Leave to File Amended Complaint in Intervention, and an Amended Complaint in Intervention. On October 30, 1989, the Court referred Texas' motion to the Special Master.

9. On November 1, 1989, the Special Master issued "Litigation Management Order No. 1," dated as of October 18, 1989, in which, in paragraph 8, he stated:

> States considering intervention are requested to make a prompt determination of their plans, such that motions for leave to intervene can be filed thirty (30) days from the date of this order [October 18, 1989]. Prospective intervenors meeting this timetable will be treated on the same scheduling track as parties presently participating * * *.

10. The States' Complaint in Intervention is identical to the Complaint in Intervention filed by Alabama, *et al.*, and is filed in accordance with Litigation Management Order No. 1.

11. As set forth in the attached proposed Complaint in Intervention, the States seek a determination of their rights to certain unclaimed intangible personal property, referred to as "Excess Receipts" and "Additional Excess Receipts," as defined in subparagraphs (a) and (b) below, which comes into being and acquires its character as unclaimed property in the context of securities transactions:

(a) "Excess Receipts" consist of unclaimed payments of dividends, profits, principal, interest, and securities representing any of the foregoing (collectively "Distributions"), held or formerly held by brokerage firms (re-

gardless of where incorporated). Excess Receipts are Distributions received by these brokerage firms for the benefit of the entities or individuals who possess the economic rights to the securities, including the entitlement to Distributions ("Beneficial Owners"), but which do not reach the Beneficial Owners. Upon information and belief, Excess Receipts are maintained in a "Suspense Account" until expiration of the applicable dormancy period, after which time they generally are demanded by and are remitted to New York.

(b) "Additional Excess Receipts" consist of (i) Distributions presently being remitted, or which may be remitted, to New York by nonbrokerage firm intermediaries, such as banks and clearinghouses for the settlement of trades in securities; and (ii) Distributions consisting of unclaimed principal and interest payments on state and municipal obligations. Additional Excess Receipts come into being in the same manner as Excess Receipts.

12. The Express Receipts and Additional Excess Receipts (collectively "Funds") claimed herein constitute unclaimed property which comes into being when Distributions by the entity initially issuing the shares of stock, bonds, debentures and other securities ("Issuer") do not reach the Beneficial Owner. Intermediaries in the chain of distribution, such as banks, brokerage firms and clearinghouses, act on behalf of the Issuer and the Beneficial Owner with respect to Distributions.

13. If the identity of the Beneficial Owner is unknown, Distributions by corporations ("Corporate Issuers") and state and local governmental entities ("Government Issuers") that are unclaimed should be remitted to the state in which the Corporate Issuer is incorporated, or to the state of the Government Issuer, pursuant to each such state's unclaimed property statute. Each State claims such Distributions by Corporate Issuers incorporated within that State or by Government Issuers of that State.

14. The amount of the Funds at issue in this litigation that the States are entitled to is presently unknown, but is substantial.

15. Upon information and belief, portions of the Funds presently being remitted to New York are being commingled with the general funds of New York, are being expended by New York for general governmental purposes, and are not being held separate by New York subject to claims by the rightful owners.

16. The decision of the Court in this action will conclusively determine the right of the States to claim and take possesion of the Funds. If the contention of either Delaware or New York is sustained, the States will be precluded from claiming and taking possession of the Funds.

17. The States' interests are not adequately represented by the original parties because Delaware, New York and the States each assert conflicting claims to the Funds. The States' interests are not adequately represented by Texas or by other intervening jurisdictions because neither Texas nor the other intervening jurisdictions can be expected to identify, advocate and protect the rights of the States for several reasons: (i) they have no incentive to identify the property held by New York which properly belongs to the States; and (ii) each State's claims are based on its own unclaimed property statute, which neither Texas nor the other intervening jurisdictions can be expected to master so as to adequately represent the interests of the States.

18. The States' motion is timely because it is filed within the time specified in Litigation Management Order No. 1. Neither Delaware nor New York has responded to Texas' Amended Complaint in Intervention, to the Complaint in Intervention filed by Alabama, *et al.* or to the Complaints in Intervention filed by the eight jurisdictions referenced in paragraph 4, *supra*. Finally,

the States are represented by the same counsel representing Alabama, *et al.*, and are prepared to comply with the schedule specified in Litigation Management Order No. 1.

19. For the foregoing reasons, the States are entitled to intervene as a matter of right pursuant to Rule 24 (a) (2), Federal Rules of Civil Procedure.

II.

20. Alternatively, the States request this Court to exercise its discretion and allow intervention pursuant to Rule 24 (b) (2), Federal Rules of Civil Procedure.

21. A determination of the States' claims to the Funds involves questions of law or fact common to those already before the Court.

22. The States' intervention will aid in the resolution of factual issues and the application of the law to the facts.

23. The States' intervention will not unduly delay or prejudice the adjudication of the rights of the parties to this action.

24. The States' intervention will avoid a multiplicity of lawsuits by obviating the need for the States to file separate actions against New York, thus expediting the ultimate resolution of the entire controversy and promoting judicial economy and efficiency.

25. For the foregoing reasons, the States should be allowed permissive intervention pursuant to Rule 24 (b) (2), Federal Rules of Civil Procedure.

III.

26. In *Western Union Telegraph Company* v. *Pennsylvania*, 368 U.S. 71, 79 (1961), this Court recognized the difficulties inherent in resolving controversies between different states over their respective rights to claim and

take possession of unclaimed intangible personal property, and concluded that this Court is the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." *See also Pennsylvania* v. *New York*, 407 U.S. 206 (1972); *Texas* v. *New Jersey*, 379 U.S. 674 (1965).

27. The States seek the opportunity to present their claims to this Court. This Court has allowed Texas to intervene in this action; and the Special Master has recommended that the motions to intervene of Alabama, *et al.*, seven other states and the District of Columbia be granted. For purposes of this motion the States stand in the same position as did Texas prior to the granting of its motion, and as did Alabama, *et al.* and the seven other states and the District of Columbia prior to the recommendation of the Special Master.

28. Wherefore, the States pray that their Motion for Leave to File Complaint in Intervention be granted.

Respectfully submitted,

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Plaintiff,

STATE OF TEXAS,
Plaintiff-Intervenor,

STATES OF ARKANSAS, FLORIDA, IOWA, MISSISSIPPI, MISSOURI, NEW HAMPSHIRE AND WEST VIRGINIA,
Plaintiffs in Intervention,

v.

STATE OF NEW YORK,
Defendants.

COMPLAINT IN INTERVENTION OF THE STATES OF ARKANSAS, FLORIDA, IOWA, MISSISSIPPI, MISSOURI, NEW HAMPSHIRE AND WEST VIRGINIA

The States of Arkansas, Florida, Iowa, Mississippi, Missouri, New Hampshire and West Virginia, Plaintiffs in Intervention, by and through their Attorneys General and Special Counsel, file this Complaint in Intervention and allege as follows:

I. JURISDICTION

1. The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and Section 1251 of Title 28 of the United States Code.

II. PENDING ACTION

2. On May 31, 1988, this Court granted Plaintiff State of Delaware's ("Delaware") Motion for Leave to File Complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property held by securities brokerage firms in Delaware.

3. On February 21, 1989, the Court granted the State of Texas' ("Texas") Motion for Leave to File Complaint in Intervention. The Texas Complaint also made subject to this suit certain additional unclaimed intangible personal property held by securities brokerage firm and non-brokerage firm intermediaries.

III. INTEREST AND CLAIM OF PLAINTIFFS IN INTERVENTION

4. Plaintiffs in Intervention are the States of Arkansas, Florida, Iowa, Mississippi, Missouri, New Hampshire and West Virginia ("States").

5. The States seek a determination of their rights to certain unclaimed intangible personal property, referred to as "Excess Receipts" and "Additional Express Receipts," as defined in subparagraphs (a) and (b) below, which comes into being and acquires its character as unclaimed property in the context of securities transactions:

(a) "Excess Receipts" consist of unclaimed payments of dividends, profits, principal, interest, and securities representing any of the foregoing (collectively "Distributions"), held or formerly held by brokerage firms (regardless of where incorporated). Excess Receipts are Distributions received by these brokerage firms for the benefit of the entities or individuals who possess the economic rights to the securities, including the entitlement to Distributions ("Beneficial Owners"), but which are not

distributed to the Beneficial Owners. Upon information and belief, Excess Receipts are maintained in a "Suspense Account" until expiration of the applicable dormancy period, after which time they generally are demanded by and are remitted to New York.

(b) "Additional Excess Receipts" consist of (i) Distributions presently being remitted, or which may be remitted, to New York by nonbrokerage firm intermediaries, such as banks and clearinghouses for the settlement of trades in securities; and (ii) Distributions consisting of unclaimed principal and interest payments on state and municipal obligations. Additional Excess Receipts come into being in the same manner as Excess Receipts.

6. The Excess Receipts and Additional Excess Receipts (collectively "Funds") claimed herein constitute unclaimed property which comes into being when Distributions by the entity initially issuing the shares of stock, bonds, debentures and other securities ("Issuer") do not reach the Beneficial Owner. Intermediaries in the chain of distribution, such as banks, brokerage firms and clearinghouses, act on behalf of the Issuer and the Beneficial Owner with respect to Distributions.

7. If the identity of the Beneficial Owner is unknown, Distributions by corporations ("Corporate Issuers") and state and local governmental entities ("Government Issuers") that are unclaimed should be remitted to the state in which the Corporate Issuer is incorporated, or to the state of the Government Issuer, pursuant to each such state's unclaimed property statute. Each State claims such Distributions by Corporate Issuers incorporated within that State or by Government Issuers of that State.

8. Upon information and belief, portions of the Funds presently being remitted to New York are being commingled with the general funds of New York, are being

expended by New York for general governmental purposes, and are not being held separate by New York subject to claims by the rightful owners.

PRAYER FOR RELIEF

WHEREFORE, the States pray:

1. That New York be restrained and enjoined from expending any Funds collected but presently unspent, and any Funds it may collect in the future, until such time as this controversy is resolved, and that all such Funds be kept in a segregated account;

2. That judgment be entered declaring that if the Beneficial Owner is unknown, the Funds held by brokerage firms and other intermediaries attributable to Corporate Issuers and Government Issuers are subject only to the claims of the state of incorporation of the Corporate Issuer or the state of the Government Issuer;

3. That New York be directed to pay or deliver to each of the States all Funds it has received and may receive, where the Beneficial Owners of the funds are unknown, that are attributable to Corporate Issuers incorporated in each such State and to Government Issuers of each such State, which presently are deemed abandoned pursuant to the applicable dormancy period under each such State's unclaimed property statute;

4. That New York be directed to pay or deliver to each of the States all remaining Funds it has received or may receive, where the Beneficial Owners of the Funds are unknown, that are attributable to Corporate Issuers incorporated in each such State and to Government Issuers of each such State, as such funds become abandoned pursuant to the applicable dormancy period under each such State's unclaimed property statute; and

5. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

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STATE OF NEW YORK,

Defendant.

BRIEF OF THE STATES OF ARKANSAS, FLORIDA, IOWA, MISSISSIPPI, MISSOURI, NEW HAMPSHIRE AND WEST VIRGINIA IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

The States of Arkansas, Florida, Iowa, Mississippi, Missouri, New Hampshire and West Virginia (hereinafter the "States"), by and through their Attorneys General and Special Counsel, hereby adopt and incorporate by reference as though fully recited herein, in support of their Motion for Leave to File Complaint in Intervention, (1) the Brief filed with this Court on April 21, 1989 by the States of Alabama, Hawaii, Illinois, Indiana, Kansas, Louisiana, Montana, Nevada, Oklahoma, South Dakota, Utah and Washington, and the Commonwealths of Kentucky and Pennsylvania (hereinafter "Alabama, *et al.*") in Support of their Motion for Leave to File Complaint in Intervention, and (2) the Reply filed on May 26, 1989 by Alabama, *et al.* to the State of New

York's Opposition to Motion for Leave to File Complaint in Intervention.

On September 13, 1989, the Special Master filed a Report with the Court in which he recommended that the Court grant the motions for leave to intervene and to file a complaint in intervention filed by Alabama, *et al.* and by eight other jurisdictions: the States of Arizona, Connecticut, Idaho, New Mexico, Tennessee, Virginia and Wisconsin, and the District of Columbia. On October 16, 1989, this Court accepted the Special Master's Report for filing.

On October 12, 1989, Texas filed a Motion for Leave to File Amended Complaint in Intervention, and an Amended Complaint in Intervention. Texas' amended complaint made subject to this suit the same category of property claimed by Alabama, *et al.* and by the States. On October 30, 1989, the Court referred Texas' motion to the Special Master.

On November 1, 1989, the Special Master issued "Litigation Management Order No. 1," dated as of October 18, 1989, in which, in paragraph 8, he stated:

> States considering intervention are requested to make a prompt determination of their plans, such that motions for leave to intervene can be filed thirty (30) days from the date of this order [October 18, 1989]. Prospective intervenors meeting this timetable will be treated on the same scheduling track as parties presently participating * * *.

The States' interests are not adequately represented by the original parties because Delaware, New York and the States each assert conflicting claims to the Funds. The States' interests are not adequately represented by Texas or by the other intervening jurisdictions because neither Texas nor the other intervening jurisdictions can be expected to identify, advocate and protect the rights of the States for several reasons: (i) they have no incentive

to identify the property held by New York which properly belongs to the States; and (ii) each State's claims are based on its own unclaimed property statute, which neither Texas nor the other intervening jurisdictions can be expected to master so as to adequately represent the interests of the States.

The States' motion is timely because it is filed within the time specified in Litigation Management Order No. 1, prior to the start of discovery under that Order. Neither Delaware nor New York has responded to Texas' Amended Complaint in Intervention, to the Complaint in Intervention filed by Alabama, *et al.* or to the Complaints in Intervention filed by the eight other jurisdictions. Moreover, the States are represented by the same counsel representing Alabama, *et al.*, seek leave to file a Complaint in Intervention identical to that filed by Alabama, *et al.*, and are prepared to comply with the schedule specified in Litigation Management Order No. 1.

This Court has allowed Texas to intervene in this action; and the Special Master has recommended that the motions to intervene of Alabama, *et al.* and of eight other jurisdictions be granted. For purposes of this motion the States stand in the same position as did Texas prior to the granting of its motion, and as did Alabama, *et al.* and the eight other jurisdictions prior to the recommendation of the Special Master. Therefore, intervention in this suit by the States not only is appropriate, but is necessary for the equitable resolution of this controversy.

CONCLUSION

For the reasons stated, the Motion of the States of Arkansas, Florida, Iowa, Mississippi, Missouri, New Hampshire and West Virginia for Leave to File Complaint in Intervention should be granted.

Respectfully submitted,

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